U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-V-

DATE: JULY 6, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a senior engineer working on wireless communications technology, seeks classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Nebraska Service Center, denied the petition. The Director found that the Petitioner established his eligibility as an advanced degree professional, but did not establish that a waiver of the job offer requirement is in the national interest. Specifically the Director concluded that the Petitioner had not demonstrated the necessary influence in the field.

The matter is now before us on appeal. In his appeal, the Petitioner submits additional evidence and maintains that the Director erred by focusing on citations and giving insufficient weight to other exhibits.

Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to confirm that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

> (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of Job Offer –
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> > (i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.[1]

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Dep't of Transp., 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must verify that the national interest would be adversely affected if a labor certification were required by establishing that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by documenting a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

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[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

II. ANALYSIS

The Petitioner obtained a Ph.D. in microwave electronics, electromagnetism, and optoelectronics from [redacted] He seeks to continue his work as a senior engineer. Accordingly, the Petitioner is an advanced degree professional. 8 C.F.R. § 204.5(k)(2) (definitions of advanced degree and profession). As explained by the Petitioner in his initial letter, his area of work is radio frequency (RF) and microwave engineering, the branch of electrical engineering that allows wireless communication between devices. The record reflects that his graduate research involved the creation of a new calibration technique to allow more accurate computer modelling and more efficient production of RF devices. In his position as a senior engineer for [redacted] the Petitioner is applying his modelling skills to the design of a radar sensor for complex speed tracking systems to improve highway and railway safety, and the development of a high-efficiency amplifier for use in the fifth generation cellular network.

The Director acknowledged that the Petitioner worked in an area of intrinsic merit and that the proposed benefits of his research, creating more powerful and reliable systems at lower costs, would be national in scope. At issue is whether the Petitioner has shown the necessary track record and influence to verify that it is in the national interest to waive the job offer requirement. The Petitioner provided numerous letters, published scholarly articles, some evidence of citations, an invitation to peer review a manuscript for a journal, and his receipt of €20,000 at the [redacted] in 2012. Acknowledging the letters but focusing primarily on the number of citations, the Director concluded that the Petitioner had not demonstrated that his contributions "have enjoyed widespread implementation." The standard, however, is whether the Petitioner has a history of demonstrable achievement with some degree of influence on the field as a whole. For the reasons discussed below, we find the Petitioner has met this standard.

The record indicates the Petitioner was actively recruited by [redacted] and has applied his prior research to the company's benefit. Specifically, [redacted] president and chief executive officer of that company, affirms that he met the Petitioner at a symposium and invited him to interview for a position. After the interview process, [redacted] offered him the senior engineer position despite the fact that he had not previously worked in industry "because I believed deeply in the advantage that he could bring to [the] company." [redacted] director of Business & Legal Affairs at [redacted] explains that upon starting at that company, the Petitioner "applied the results of his research to his work here." [redacted] notes that by hiring the Petitioner, [redacted] was able to incorporate his results, which derive from his prior published research.

The Petitioner has authored scholarly articles and accumulated some citations. The record contains his unpublished thesis, two published articles, and conference presentations appearing in published proceedings. The Petitioner initially presented seven total citations. In response to the Director's request for evidence, he also documented a large number of views and downloads. The Director noted that publication alone is not a gauge of impact; rather, citations are a reliable statistic in evaluating the impact of those articles. The Director further stated that, unlike citations, views and downloads do not confirm any ultimate reliance on the Petitioner's findings. The Director then

concluded that the Petitioner had not shown that the field's reaction to his articles distinguished him from his peers.

On appeal, the Petitioner relies on a non-precedent decision for the proposition that citations are not the only acceptable means of measuring impact. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Nevertheless, we agree with this principle. It is necessary to review all of the evidence in the record. While the Director is correct that views and downloads by themselves do not confirm the impact of the articles, other materials in the record must be part of our analysis and may shed light on the Petitioner's influence.

In this case, some of the letters predict future benefits without detailing how the Petitioner has already had a degree of influence on the field. For example, the Petitioner's thesis judge, predicts that the Petitioner's work "will have a valued intervention in the company he will join." professor and chair, concludes that the Petitioner's Ph.D. thesis results "pave the way to crucial and in depth investigations in this research area." assistant professor of electrical engineering, explains: "With the refinement of RF technology based on graphene or other emerging material, the quest for excellence will make mandatory the use of techniques such [as] that of [the Petitioner] to optimize every compartment of RF material research." While these letters are useful in detailing how the Petitioner will benefit the national interest, the Petitioner must also show his past track record.

Other letters in the record provide specific examples of how the Petitioner has already had some degree of influence in the field beyond his immediate circle of colleagues. associate professor at the in affirms that he applied the Petitioner's model and cited his work. Specifically, explains that the Petitioner anticipated a trend, and extended the validity range of nanoscale transistor models to large scale ones. Because of this work, continues, he "implemented [the Petitioner's] model and used it to further improve [his] own work on [graphene nanoribbon] transistors." an electronic engineer at clarifies that he met the Petitioner at an electronics exposition where they discussed the "worse than expected reception issue" in one of products. The Petitioner suggested his technique, which applied, allowing "to enhance the performance of its product and to reduce the costs associated [with] the manufacture of its equipment." a validation engineer at discovered the Petitioner's technique and contacted him. "The procedure introduced by [the Petitioner] allowed accelerating the development, achieving the measurement accuracy required." a senior electrical engineer at met the Petitioner after contacting with an inquiry. The Petitioner's proposal "reduced the prototype costs by 30%" and "accelerated our design efforts."

Additional letters the Petitioner offers on appeal further reflect his influence beyond his employer. a Ph.D. graduate, met the Petitioner at a seminar where he and a coauthor

"addressed an issue similar to one I had at my company that despite my hard work I could not solve." The Petitioner "delivered an accurate and reliable measurement of the transistor I used, enabling full and effective broadband operation." Finally, [redacted] hardware validation and integration engineer for [redacted] affirms that, after looking for a long time for a suitable RF technique, a colleague at [redacted] pointed him towards the Petitioner's de-embedding method. [redacted] "implemented it in [his] [redacted] validation setup, allowing [him] to promptly and precisely remove the unwanted effects of the filter and interconnection components in the device under test." [redacted] concludes that the Petitioner's procedure resulted in "an enormous gain in productivity for my work as [a] contractor." These letters satisfactorily chronicle the Petitioner's degree of influence in the field.

While a strong citation history can be useful in establishing an extent of an individual's influence on the field as a whole, the evidence in the aggregate supports the Petitioner's affirmation that his work has found practical application in industry settings at multiple employers. The submitted letters describe with specificity how his work has been used by the employer that recruited him based on his technique, as well as by independent companies, and they also attest to its wider application in the field. For these reasons we find the record sufficient to demonstrate that the Petitioner has had a degree of influence on the field as a whole.

III. CONCLUSION

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner in this case has established by a preponderance of the evidence that he qualifies as an advanced degree professional, and that a waiver of the job offer requirement will be in the national interest of the United States. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.

Cite as *Matter of G-V-*, ID# 17470 (AAO July 6, 2016)